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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES JOHNSON,

Plaintiff,

v.

23 CV 02441

CLEARVIEW AI, INC., ET AL,

Defendants.

Conference

New York, N.Y.
January 8, 2025
11:00 a.m.

Before:

HON. KATHERINE POLK FAILLA,

District Judge

APPEARANCES

LAW OFFICE OF BERNARD V. KLEINMAN, PLLC

Attorney for Plaintiff

BY: BERNARD V. KLEINMAN

GORDON REES SCULLY MANSUKHANI

Attorneys for Defendants

BY: RONALD ANDREW GILLER

MALLORY J. BENNER

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(In open court)

THE DEPUTY CLERK: Your Honor, this is in the matter of *Johnson v. Clearview AI*.

Counsel, please state your name for the record, beginning within counsel for the plaintiff.

MR. KLEINMAN: Good morning, Judge. My name is Bernard Kleinman, and I represent Mr. Johnson. He is sitting to my right.

THE COURT: Sir, thank you very much.

Mr. Giller.

MR. GILLER: Good morning, your Honor. Ronald Giller from Gordon, Rees, Scully, Mansukhani for the defendants.

THE COURT: Thank you very much. Good morning to you as well.

MS. BENNER: Good morning, your Honor. Mallory Benner, also from Gordon, Rees, Scully, Mansukhani also on behalf of the defendants.

THE COURT: Thank you very much.

I've been advised Mr. Giller is taking the lead for the moment.

Is that correct?

MR. GILLER: That's right, your Honor.

THE COURT: I will keep that in mind. Thank you.

Counsel and client, initially when I scheduled this conference, I was scheduling it against the backdrop of some

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1 claims of content and other issues, but as of I guess Monday
2 there's an additional thing to add to the mix, and that is
3 questions of the production of discovery. So it's my intention
4 today to speak both to issues of certain social media postings
5 and then as well issues of discovery.

6 Mr. Kleinman, actually, I'm going to begin with you,
7 please, sir. There should be three microphones at the table,
8 so I'll ask you to bring one of them closer to you, sir, just
9 because the acoustics in this courtroom are not what I would
10 like them to be.

11 Mr. Kleinman, I read very carefully your letter of
12 January 3rd in response to submissions of defense counsel of
13 December 24 and December 30, and I do wrestle with the First
14 Amendment issues here, sir. They were real ones. But I'll say
15 there's a bit of a difference I think, and that was that
16 previously I at least had the comfort that the Alston & Bird
17 firm was at least trying, if not always successfully -- don't
18 shake your head, Mr. Johnson.

19 MR. JOHNSON: Sorry, ma'am.

20 THE COURT: Was at least trying to reign in some of
21 your client's more problematic impulses. You're not. In fact,
22 you're trying to justify them. Your January 3rd letter at
23 times transcends advocacy and actually mistakes what has been
24 posted.

25 So I am aware of the limits on my power that are sort

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1 of implicit in your client's First Amendment rights, and I
2 don't want to trample on them, but at some point the postings
3 become vexatious, and at some point they interfere with my
4 litigation. So I'd like to begin on that issue, which is of
5 Alston at least tried to keep your client from saying stupid
6 things that compromised his case. You're not. Why not?

7 Secondly, as a second point, is it not the case that I
8 can direct your client not to have contact with the individual
9 litigants who are the defendants in this case?

10 MR. KLEINMAN: If I can respond, Judge?

11 THE COURT: Please.

12 MR. KLEINMAN: Yes. Well, first of all, I don't
13 believe, and I may be wrong, that at least from the
14 correspondence that Alston & Bird submitted, that they ever
15 really raised this First Amendment issue and also the issues
16 regarding the fact --

17 THE COURT: I raised the First Amendment issues, sir,
18 but they told me that they would try very hard to keep your
19 client from making antisemitic posts.

20 MR. KLEINMAN: And as I said in my letter, I forwarded
21 the letters from Mr. Giller and your orders to my client. The
22 reason I raised the First Amendment issue and also the other
23 issues in my correspondence to your Honor, including this issue
24 about defamation and the restrictions as the Second Circuit has
25 expressed on that, and also the fact that Mr. Johnson is a

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1 shareholder in Clearview, and also his family is, and I think
2 has legitimate concerns about the value of the corporation, is
3 that I just thought these were issues that needed to be
4 explored within the context of what he had said.

5 I'm not saying that -- obviously, you have control
6 over the litigation in front of you, and, obviously, if there
7 is -- as you said, an individual acts in a vexatious manner,
8 that he or she needs to be reigned in. I just wanted to raise
9 those issues, because I just felt they had not been fully
10 explored.

11 I also, in my letter, I think on the first page, I
12 also stated that at least according to the case law that I had
13 read and the case law that I cited, excuse me, I think the case
14 that Mr. Giller cited, they're like this four-part test to make
15 a determination. And I didn't see any satisfaction about
16 whether there should be some First Amendment -- Mr. Johnson's
17 statements should be dealt with within the context of the First
18 Amendment, and, secondly, whether there was a lesser
19 sanction -- I guess he was asking for attorney fees -- than
20 what he was asking for. I was trying to just raise those
21 issues, Judge. Okay.

22 THE COURT: Thank you.

23 On the issue of lesser sanctions, I've been thinking
24 about it as well. So one thing I absolutely can do I think is
25 to tell your client in your presence, do not under any

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1 circumstances, while this litigation is pending, reach out to
2 the individual defendants in this case.

3 Is there anything that stops me from doing that?

4 MR. KLEINMAN: I don't believe that there is, Judge.

5 THE COURT: Then I have now done that.

6 MR. KLEINMAN: Okay.

7 THE COURT: There should be no more of those
8 communications.

9 MR. KLEINMAN: And I can tell you, again, I'm a
10 lawyer, okay, I'm not -- sorry, I'm not the client. I have
11 certain limitations I can do, and I try to do those, Judge.

12 THE COURT: Of course. I'm the Judge. I'm presiding
13 over the case. If you can't reign in your client and it starts
14 to impact my litigation, there are things that I can do.

15 MR. KLEINMAN: Correct.

16 THE COURT: Today we can talk about them. Right.
17 Yes. I could impose fees. I could also foreclose claims, and
18 of course, in the very worse circumstance, there is the
19 possibility of terminal sanctions if this keeps on keeping on.

20 What I'm concerned about, sir, is I appreciate that
21 you have to zealously advocate for your client. I understand
22 that. But some of your descriptions of the attachments to the
23 December 30 letter from Mr. Giller and the December 24 letter
24 are descriptions I simply can't agree with, because I, too,
25 have seen these documents. So I just think going forward I

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1 think you should try to preserve your credibility with the
2 Court and your relationship with your client. I have to
3 believe there's a way of doing it.

4 But, I mean, at one point your client announced -- you
5 say on your second page of your January 3rd letter that on the
6 fourth page of the attachments to the December 30 letter that
7 there is a -- it contains a reference to an alleged admission
8 by Attorney Giller but is not otherwise offensive. This
9 statement includes allegations by your client that individuals
10 are, "try to kill me in my doorstep," that they are part of a
11 criminal enterprise, and then says, the supposed admission by
12 Mr. Giller, which I'll talk to him about in a moment, is that
13 Mr. Giller has admitted that Clearview board members are
14 illegally coordinating legal strategies.

15 I'm not sure whether the coordination of legal
16 strategies is illegal --

17 MR. KLEINMAN: I don't know either.

18 THE COURT: -- but I'm not sure he's admitting to this
19 either, and I'm not sure why this gets publicized. I feel as
20 though your client is trying to pursue one case here and one
21 case on social media.

22 To the extent the social media postings, ridiculous as
23 they may be, impact this case, I get to get involved. So what
24 I'm saying to you is I appreciate your efforts to explain some
25 of these statements, but some of your explanations do not

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1 accord with the actual documents that I have.

2 So what do we do? Your client, if he's going to
3 continue to post about the case, he's going to run the risk of
4 sanctions. Yes.

5 MR. KLEINMAN: Yes, he is.

6 THE COURT: Okay.

7 MR. KLEINMAN: And I can tell you, Judge, that he is
8 -- I mean, he no longer is on X, or Twitter, whatever it is.

9 THE COURT: Was he banned?

10 MR. KLEINMAN: Yes, he was removed from Twitter, as I
11 understand it. So that issue is I guess dead. But I know
12 there are other avenues, unfortunately, on social media that
13 people can post whatever they want to post.

14 THE COURT: Also, I've seen situations in which folks
15 banned from social media are reinstated in social media. So
16 this may not be a forever thing.

17 MR. KLEINMAN: No, it may not be. It may not be a
18 forever thing.

19 THE COURT: But I guess what can we do, and "we" is
20 you and me at this point, to keep this case on the path it
21 should be and not have it impacted inappropriately by social
22 media postings?

23 MR. KLEINMAN: Well, I think, first of all, correct me
24 if I'm wrong, but your prior orders were not delivered in
25 person.

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1 Is that correct?

2 THE COURT: Correct. I didn't think I needed to, but
3 that's why I have your client here today --

4 MR. KLEINMAN: Okay.

5 THE COURT: Because I --

6 MR. KLEINMAN: Okay.

7 THE COURT: -- apparently --

8 MR. KLEINMAN: Okay.

9 THE COURT: -- need to.

10 MR. KLEINMAN: There is a difference between the
11 written cudgel and the sitting on the bench cudgel. All right.

12 THE COURT: Okay.

13 MR. KLEINMAN: And I think it has some impact on
14 individuals. I don't think that -- I'm a firm believer in
15 redemption and a firm believer in telling my client that, you
16 know, he has to do what he has to do to make sure the
17 litigation moves forward and not, you know, interfere with the
18 process and the rules. So I think that it is a little -- at
19 least in your juncture, a little early for any type of
20 sanction, financial sanction, or any other sanction. However
21 --

22 THE COURT: But is it, sir? I mean, this has been
23 going on since 2023. The particular type of offensive speech
24 is different. Last time really was directed toward counsel and
25 his religiosity --

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1 MR. KLEINMAN: That's true.

2 THE COURT -- which seems bad. But it's not as though
3 your client hasn't been talking trash on social media for the
4 entirety of this case. No?

5 MR. KLEINMAN: No. I mean, I don't know the number of
6 postings, Judge. I don't follow X or any of those places.

7 THE COURT: You said to me "it's early for sanctions,"
8 and I'm saying this is yet another instance in which your
9 client's social media posting's called to my attention and it's
10 taken place over more than a year. So if I think about the
11 factors for sanctions, the nature of the conduct, the time over
12 which it's taken place, the availability of lesser sanctions,
13 things of that nature, I've got a year of this.

14 MR. KLEINMAN: Well, there are a lot of options that
15 you have, Judge. Okay.

16 THE COURT: Yes.

17 MR. KLEINMAN: I mean, you can -- if you want me to
18 spitball them, I'm happy to do it.

19 THE COURT: No. Thank you. I know what my options
20 are. Thanks.

21 MR. KLEINMAN: With imposing a sanction and staying
22 it, and then making sure that my client doesn't engage in the
23 behavior the Court finds offensive, and then it immediately
24 becomes effective if he does violate that is something that,
25 you know, is the sword of Damocles being over him, so that the

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1 matter is resolved that way.

2 THE COURT: Yes, but --

3 MR. KLEINMAN: I mean, I understand --

4 THE COURT: Again, sir, thank you. One of the things
5 is you've used an interesting phrase about the behavior that I
6 find problematic, or something to that effect. In your
7 submission what you're suggesting is what your client's doing
8 is not bad at all.

9 MR. KLEINMAN: That's not the point I was trying to
10 make, Judge.

11 THE COURT: Because, to me, certain of these postings,
12 if he wakes up and says I'm really not liking the progress of
13 this litigation, I don't think I can stop him from having that
14 opinion. If he suggests that he is asking his attorneys, which
15 would include you, to work with law enforcement agencies to
16 investigate the defendants, that seems to be -- you said that's
17 not a threat. I think it's a threat.

18 So I'm only picking what I think to be the worse of
19 the statements, and you and I may disagree as to whether all --
20 and Mr. Giller and I may disagree as to whether each statement
21 is independently worthy of sanctions.

22 MR. KLEINMAN: That's true.

23 THE COURT: But I am saying that, in the aggregate,
24 there are things from which I can choose, estimates that he has
25 made that I think are vexatious and are designed to impact and

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1 impede the litigation over which I'm presiding, so I just
2 wanted to make clear that you were being very careful about
3 saying that about statements I might be troubled by.

4 I'm acknowledging that I'm not going to say that
5 everything here affects me or I have a reaction to it in the
6 same way, but there are statements, some of which I've read to
7 you this morning, that give me grave concern that your client
8 is trying to try to this case in a forum other than this court.

9 MR. KLEINMAN: I understand that, Judge, and, as I
10 said, actually, in my letter to you and I think it is --
11 correct me if I'm the wrong, that you've admitted --
12 acknowledged rather that there are some things that he posted
13 that are -- like posting the letter that is on Pacer is like,
14 so what, I mean --

15 THE COURT: But he posted the letter and then referred
16 to people as criminals and spies. I'm not sure that was
17 necessary. Again, referring to folks as a criminal enterprise.
18 Later on he suggests that the defendants are going to end up in
19 prison. Something about being compromised by the Israeli
20 Defense Force? Was that something --

21 MR. KLEINMAN: I --

22 THE COURT: Yes. Things that are almost certainly
23 demonstrably false and probably don't even qualify as opinion
24 statements here, but --

25 MR. KLEINMAN: As I said, I mean, the defamation cases

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1 that I cited to you, I mean, I've tried a lot of defamation
2 cases in New York and whether someone's a public person or
3 not -- I'm sorry.

4 THE COURT: Please stop assaulting my microphone, sir.

5 MR. KLEINMAN: You know, whether something is opinion
6 or whether something is proveable fact or not, I don't know.
7 And of course that's a matter of -- you know, for the parties
8 to determine.

9 But I understand what you're saying about certain
10 statements, you know, and I do accept that. And I just feel
11 that there are other statements that were cited by Attorney
12 Giller that were not actionable under your previous orders.
13 And it was just everything that he had -- Mr. Johnson had
14 posted on the 24th and the 30th, whatever those dates were.
15 That was all I was trying to bring to your attention.

16 And as I said, I didn't think that -- I just thought
17 these were -- you know, before the Court issues some type of
18 sanction and gag order, okay, you've issued a gag order
19 already, but also imposing sanctions, that there should be a
20 little bit of conversation, especially since that we're finally
21 in front of your Honor, rather than just dealing with a written
22 order from your Honor.

23 THE COURT: Understood.

24 Before I turn to Mr. Giller, let me please understand
25 the facts as you understand them, sir.

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1 Some of these statements seem to have been occasioned
2 by a settlement offer that your client made. I want to -- I'll
3 hear from the defense in a moment as to whether they believe an
4 offer was made.

5 But, to the best of your understanding, did your
6 client at some point in December communicate a settlement offer
7 to the individual defendants in this case?

8 MR. KLEINMAN: I do not know if he actually
9 communicated directly to them. I obviously have not
10 communicated with the defendants.

11 I did send a lengthy settlement offer to Attorney
12 Giller.

13 THE COURT: When approximately was that, sir?

14 MR. KLEINMAN: It was -- I think it was before
15 Christmas, Judge. I'd have to look back, but it was before
16 Christmas. And then I followed up -- my recollection may be
17 wrong, maybe Attorney Giller has a better recollection. I did
18 not hear from him.

19 And then I think I asked him about if he had spoken to
20 his clients, and the response was they had no interest in
21 settling. And I even suggested, if I might, Judge, that we
22 have a four-way, and he was not even interested -- his clients
23 were not interested in a four-way.

24 So, I mean, I'd like to also -- I mean, if I can jump
25 for a second, this issue about the discovery issues --

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1 THE COURT: No. We'll talk about that in a second.

2 MR. KLEINMAN: We'll talk about that later. Okay.

3 Thank you.

4 THE COURT: The reason I was asking about your timing
5 of the settlement offer is when there are references on the
6 18th of September by your client to settlement talks breaking
7 down, is that a reference to a settlement offer that you made?

8 MR. KLEINMAN: I believe that's so.

9 THE COURT: I see.

10 MR. KLEINMAN: And I have to look at my email
11 correspondence, the dates, but I'm pretty sure that's what it
12 was.

13 And the response of the defendant was they had no
14 interest of even having discussions, so the settlement
15 statement that there was a breakdown was that there was nothing
16 even initiated.

17 THE COURT: It is unfortunate that your client then
18 says, "unfortunately, one of the defendants continued to
19 instruct his attorney, Ron Giller, to be complicit in
20 Ton-That's" -- I don't know how to pronounce the gentleman's
21 name -- "securities fraud and criminality."

22 It is one thing to say they didn't want to settle, but
23 accusing securities fraud and complicit criminality is more
24 fun.

25 But it is your recollection that there was in fact a

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1 settlement offer that you communicated to Mr. Giller?

2 MR. KLEINMAN: Yeah. And it was a written -- I maybe
3 raised five or six detailed points for settling the case.

4 THE COURT: Thank you for letting me know.

5 Mr. Giller, let me hear from you now, please, on these
6 issues, sir.

7 MR. GILLER: Good morning, your Honor.

8 THE COURT: Good morning, sir.

9 I'll ask you also to bring the microphone closer to
10 you, because the acoustics in the courtroom are not the best.
11 Thank you.

12 MR. GILLER: I tend to speak loud, so I didn't want to
13 get too close to the mic, but here we go.

14 Where do you want me to start, your Honor?

15 THE COURT: Well, you can talk about the underlying
16 facts that led to the spate of social media postings, beginning
17 on the 18th of December. You can talk about the First
18 Amendment issues that Mr. Kleinman has raised. You can talk
19 about the defamation issues that he's raised. All of those
20 things need to be discussed, sir.

21 MR. GILLER: Okay. Thanks, your Honor.

22 Look, I know you're familiar with what the statements
23 were. You've read them. I can hear the thoughtfulness that
24 went into this.

25 This is one of the most outrageous cases I've ever

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1 been involved in. I've never been personally attacked, never
2 had an adversary or adversary's client make comments that are
3 clearly thinly veiled comments about my religion. It can only
4 be described as antisemitic.

5 To be that attacked personally, for criminality, when
6 obviously it's nonsense and there's nothing to any of this, has
7 been troubling, to say the least. But we have taken I believe
8 a very restrained approach to this by coming to your Honor and
9 seeking assistance, not filing motions and seeking what would
10 be the more extreme sanctions. We've just asked here for the
11 first time just to have our attorneys' fees covered, my
12 client's attorneys' fees, for having to bring these issues
13 repeatedly to your Honor.

14 You know, you made a comment a few minutes ago, do the
15 postings impact and impede the litigation? They do, your
16 Honor.

17 How am I supposed to properly defend my client in what
18 we believe is a completely frivolous lawsuit when I'm being
19 personally attacked with these allegation?

20 And I understand that --

21 THE COURT: Sir, just one moment. I am pushing back,
22 because I am kicking the tires on both sides.

23 The materials that I was given suggested that, for
24 example, one of these tweets on -- or whatever they're called
25 now, on X., on December 18, had just under 3,000 views. Now,

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1 it's one thing if your adversary were Mr. Musk and he had
2 hundreds of millions of people looking at it, but tell me,
3 please, and I ask this with all seriousness, how 3,000 people
4 who are similarly minded to Mr. Johnson are going to really
5 impact the progress of this litigation.

6 Maybe I'm not understanding the number of views, maybe
7 there are 3,000 people who are more thoughtful than I think
8 they are, but I want to understand how they impact this
9 litigation.

10 MR. GILLER: Your Honor, I'm not suggesting
11 necessarily that those 3,000 people have chosen to follow
12 Mr. Johnson, if they're followers, or have seen the post -- I
13 don't know either of those, because we haven't gotten that
14 information in discovery as we should have --

15 THE COURT: Yes.

16 MR. GILLER: -- which I know is a separate issue. So
17 I don't know -- I don't know the extent of these postings. I
18 also don't know the extent of where these postings have
19 appeared. I don't know if the reach of what Mr. Johnson has
20 put out, spewed out into the world is greater than 3,000 likes,
21 whatever it may be, on the post that is submitted. So I don't
22 know the full reach of it. That's one thing.

23 The other part of the impact is the impact on us and
24 our client.

25 THE COURT: Slow down, please, sir. Thank you.

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1 MR. GILLER: Sure.

2 THE COURT: If I may ask, are you getting threats from
3 individuals because of this lawsuit?

4 MR. GILLER: I'm not getting threats from other
5 individuals, but I have read Mr. Johnson's posts, if we're
6 calling them that, to be more than just antisemitic rantings or
7 rantings about phantom criminality, where he's made comments --
8 it's all in the submissions, but one comment from July of '23
9 is "now I'm bringing my friends."

10 And another comment was, "you won't get any more
11 chances."

12 These are -- I read these in the context of all of
13 these postings as being implied threats to myself and my
14 client. So how does that not impact our ability to defend this
15 case?

16 THE COURT: Your clients sincerely feel as though
17 their bodily integrity is in danger because of this litigation?

18 MR. GILLER: Yes. There has -- yes. Yes. In the
19 sense that these are threats by someone who has appeared to be
20 not directly connected to reality, that suggests physical harm.
21 So yes, I have some concerns about that. Not beyond the things
22 we've submitted as of yet, though.

23 THE COURT: I appreciate that you're asking me to view
24 all this in the aggregate, but I am actually focusing on the
25 more recent December submissions. So I think Mr. Kleinman will

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1 argue that these are musings, these are his opinions, this is
2 wishful thinking that somehow you'll all be arrested for this,
3 but let me hear from you why that's different, why that's not
4 true, why you should be concerned about being accused of
5 engaging in criminal conduct.

6 MR. GILLER: I mean, your Honor, we're in a
7 litigation -- I know the Court's well aware, an individual, a
8 plaintiff in a case should not be permitted to violate a Court
9 order. I mean, your Honor herself a year and a half ago made a
10 comment about being concerned he was trying to use his postings
11 to intimidate counsel, and then he proceeded for the next year
12 and a half. It wasn't a short period of time. This was the
13 entire length of the case, a history of these kind of postings
14 that have not stopped despite a court order.

15 So part of my concern is the bench has said this needs
16 to stop. Prior counsel spoke to his client apparently and came
17 back to the Court and said, he's agreed to. You've ordered
18 that. The process needs some integrity. If the orders aren't
19 going to be followed, we lose that integrity in the process and
20 our faith in the ability to pursue what we want to pursue,
21 which is what we believe to be a completely unfounded case here
22 --

23 THE COURT: Can you engage on Mr. Kleinman's arguments
24 about the First Amendment? Because it was something that
25 concerned me in my initial review and is something I remain

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1 concerned with today.

2 I'll let you know, because I'm sure you've all been
3 looking for them, there are very few cases discussing sanctions
4 for social media postings. Sometimes the social media posting
5 is evidence in the underlying case. All right? Its
6 significance is the posting precipitated the litigation. But
7 here it's a question of social media postings occurring
8 concurrent with the progress of litigation.

9 I've seen two courts in other jurisdictions really
10 grapple with the First Amendment issue, so I'd appreciate your
11 thoughts on them.

12 MR. GILLER: Your Honor, similarly, we have not seen
13 yet published decisions in the Second Circuit specifically
14 dealing with this issue. I don't think there's a First
15 Amendment issue here. For that reason, we have not yet filed a
16 motion seeking any type of gag order. We're mindful of the
17 First Amendment. We're not seeking to shut down Mr. Johnson's
18 ability to speak at all.

19 What we're trying to do is stop him and make him --
20 sanction him for what he has done so far, which is, like I
21 said, make comments -- clearly implied physical threats,
22 antisemitic comments. The First Amendment doesn't protect his
23 right as a litigant to attack counsel, and I don't think
24 there's --

25 THE COURT: Where do you see the antisemitic comments

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1 in these postings?

2 There's a reference to the IDF, which I didn't quite
3 understand, and perhaps that is it. Is there something else,
4 sir?

5 There's a posting that speaks about it, is not wise to
6 hire an attorney who is a lobbyist for Huawei, or one who works
7 closely with the Israelis. So I just assume any time "Israel"
8 is mentioned it's a code word for antisemitism --

9 MR. GILLER: Your Honor, I think it's a code word for
10 "counsel is Jewish," and that was one of the first comments he
11 made a year and a half ago. I don't have a public position.
12 I'm not an official. I don't post or tweet or make public
13 statements about my views on Israel. Any comments about a
14 connection to Israel are clearly meant as an attack on my
15 religion. I don't think there's any other way to read that.
16 There's no actual connections. So if he's making a comment
17 about it, it's only because I'm Jewish. What else could it be?

18 There's no defense to that, and there shouldn't be.
19 The First Amendment doesn't protect his right to do that.

20 THE COURT: Please continue, sir.

21 MR. GILLER: I'm sorry. I thought I addressed the
22 points your Honor raised.

23 THE COURT: You have. Are there any other issues you
24 want to engage in based on my discussions with Mr. Kleinman?
25 For example, he discussed lesser sanctions. You'll tell me,

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1 no, this has been going on too long, things of that --

2 MR. GILLER: Your Honor, this was the lesser sanction.
3 We didn't come to you requesting a gag order. We didn't come
4 to you requesting something more severe, like striking what we
5 believe is a frivolous claim. We just came to you saying, the
6 bare minimum is the letters we've had to write and the time
7 we've had to spend on this, he should have to pay for. It's
8 been long enough. It's time to stop this.

9 THE COURT: Okay. Could you please tell me, and if
10 you have already, excuse me, I just want to understand the
11 sequence of events. Mr. Kleinman recalls sending a settlement
12 offer to you at a particular time sometime before Christmas.
13 Do you believe this is the settlement offer being referenced in
14 these December 18 postings?

15 MR. GILLER: I'm not going to begin to guess what is
16 in Mr. Johnson's mind when he posts these things.

17 Yes, we received an email expressing some interest
18 about a settlement, but the way it addressed it is, Mr. Johnson
19 is looking to get back into the company, be part of the
20 company. He is not part of the company now, and it should come
21 as no surprise there is no interest in having him be part of
22 this company. Not now. Not ever. They are not going to
23 engage in settlement with someone who has done the things he
24 has done.

25 There was a reason he was wound down and separated

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1 from the company several years ago, and that hasn't changed.
2 They don't have an interest in getting back into business with
3 Mr. Johnson.

4 So, yes, an outreach was made, and we responded and
5 said there was no interest in the outreach. And there's no
6 interest in paying off Mr. Johnson, if that's what they're
7 suggesting. One of the tweets makes reference to a payment or
8 a settlement, suggesting there is a number. There's zero
9 interest here, because our view is there's nothing owed to
10 Mr. Johnson in this case.

11 If your Honor recalls, this is only about a breach of
12 contract at this point. The other claims were all dismissed.

13 THE COURT: Yes.

14 MR. GILLER: The contract -- did he bring any business
15 to the company? Was he the initial source of business they
16 signed up and got paid on? The answer is no. So there's no
17 interest in having him do anything. If he actually had done
18 that, they would have just paid him for his work and been done
19 with it.

20 So there's no interest in this suggestion of
21 reengaging with him as part of this business.

22 THE COURT: I see. Just so I understand, the emails
23 and social media postings that were attached as exhibits
24 suggested that Mr. Johnson was offering to pay a price for part
25 or complete ownership of Clearview. I don't know the specifics

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1 of the offer, but was that in substance what was happening?

2 MR. GILLER: No. That didn't happen. That didn't
3 happen.

4 THE COURT: Okay. Because there's a --

5 MR. GILLER: No. I know what you're referencing, your
6 Honor. That didn't happen.

7 THE COURT: There was no -- let me make sure I
8 understand this. Mr. Johnson at no point offered to pay any
9 money to Clearview for part or complete ownership of the
10 company?

11 MR. GILLER: Your Honor, no. I have no recollection.
12 There was certainly no offer of any specific amount. I don't
13 recall there being even an offer of anything, like in terms of
14 a concept of buying into the company, so no.

15 THE COURT: I see. So there are multiple references
16 here to a price that Mr. Johnson offered for Clearview AI. You
17 have no knowledge of what that price is?

18 MR. GILLER: No. No. I know that is a false
19 statement. That is a false statement. There is no price that
20 was offered. I don't know in the five-point -- you know, hey,
21 we'd like to see if we can settle this and get into the
22 business, or we'll buy you out, like a general statement, I
23 don't recall. I don't believe there was that. But I do recall
24 specifically there was no number offered or settlement proposal
25 the way that that post suggests.

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1 THE COURT: I see. All right. I'm imagining, because
2 I imagine that you're an attorney who abides by his
3 professional responsibility obligations, that any offer you
4 received was communicated to your client.

5 MR. GILLER: Immediately, your Honor.

6 THE COURT: Right. They rejected it?

7 MR. GILLER: 100 percent.

8 THE COURT: All right. Thank you very much.

9 Mr. Kleinman, do you want to be heard in reply on
10 these issues, sir?

11 MR. KLEINMAN: Yes. Just a couple of things, Judge.

12 I don't know that references to IDF, to Israel, or to
13 Prime Minister Netanyahu in a negative context constitute
14 antisemitic comments.

15 THE COURT: There's no reason why the -- why would
16 they be mentioned at all in the context of this litigation,
17 sir?

18 MR. KLEINMAN: I don't know, but I'm just asking
19 whether references to IDF or Israel automatically are code to
20 antisemitic comments --

21 THE COURT: I might even agree with you in other
22 contexts, except in this case, and its history, I have see no
23 other reason to make mention of the IDF or Israel or Prime
24 Minister Netanyahu. It's not an issue in this case. It's not
25 a fact that came up in the history of this case. So I can only

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1 intuit that it's a code word, a dog whistle, as it were, for
2 antisemitism, because there's no other reason to mention it in
3 this case.

4 MR. KLEINMAN: I would respectfully disagree, Judge.

5 THE COURT: You haven't given me another basis, sir.
6 You haven't given me a better reason why it's being mentioned.

7 MR. KLEINMAN: I don't -- I don't think that people
8 making references to Israel or that is an antisemitic comment.

9 THE COURT: Then let's back up. Your client made
10 mention of counsel's religiosity in prior tweets. I said he
11 could not. He now makes reference to the IDF and Israel and
12 Prime Minister Netanyahu, in a case in which none of those
13 matters.

14 Now, if you've said to me -- you've respectfully
15 disagreed with me why he might be mentioning it, but you cannot
16 give me another reason why he's mentioning it.

17 MR. KLEINMAN: At this point, I think I cannot give
18 you a specific reason. I just do not think those are code
19 words for -- I just don't see it, Judge. I mean, if I'm in
20 litigation, and it's an unrelated case, okay, nothing to do
21 with Israel, and someone says in it, well, Mr. Kleinman, you
22 know, has purchased trees in Israel, and it would be -- to me
23 it would be "I have no idea what you're talking about, and it
24 has nothing to do with it," and I don't take it as antisemitic.
25 I take it as a comment that has nothing to do with the case. I

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1 mean, as a Jew, I would tend to disagree with that, Judge.

2 THE COURT: I don't see any other reason for your
3 client to make mention that it is not wise to hire an attorney
4 who works closely with the Israelis. What does that mean? It
5 has no relevance, other than as an indicator of his
6 religiosity. It has no relevance.

7 MR. KLEINMAN: It might relate to some discovery in
8 the case. I don't know. I just don't know, Judge.

9 THE COURT: Okay.

10 MR. KLEINMAN: I don't -- you know, I've tried drug
11 cases, and DEA guys get on the stand and talk about code and so
12 forth. And you know that.

13 THE COURT: Yes.

14 MR. KLEINMAN: Right. But I've never heard anyone get
15 on the stand and say, well, any time someone talks about
16 "Israel," they're clearly an anti-Semite. And I don't know how
17 anyone would be qualified as an expert to say that.

18 I just want to make an observation. There was, in the
19 offer to settle, okay -- it was a specific offer, and it was --
20 my client asked me to communicate an offer to actually purchase
21 Clearview. There was no number. And I just want to -- and as
22 your Honor well knows, in any negotiation to settle a case,
23 your initial offer is not your bottom line offer. I just -- I
24 made an offer, a detailed offer. I laid it out. And I didn't
25 say, one to 23 -- I said like five specific points, with some

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1 detail, and I anticipated that there would be, hopefully, a
2 response. And in a lot of cases, hopefully, a response other
3 than saying, no, again, not interested, as opposed to saying,
4 well, we're not -- as opposed to saying, if you're talking
5 about buying the company, what's your number? I want to make
6 that clear, there was no number, but there was an offer to
7 purchase the company.

8 THE COURT: You said there was an offer to purchase
9 but no number, but your client then reaches out to these
10 individuals and says, I want you to know that the price I
11 offered for Clearview AI, that your attorney rejected, was very
12 real. But there was no price offered.

13 MR. KLEINMAN: I don't recall a price in my email.

14 THE COURT: Exactly. So criticizing, going after
15 these individuals for rejecting or for not accepting an offer
16 that has no numbers, seems strange. More than that, he says
17 "I'm sending you this message now because I don't have
18 confidence that your attorneys are, in fact, your attorneys."

19 We've been in this case for more than a year, how
20 could he not think that Mr. Giller, who he has criticized so
21 clearly in the past, is not counsel to these people?

22 MR. KLEINMAN: I don't know. Maybe in some
23 metaphorical, sense, Judge. I don't have an answer to that.

24 THE COURT: It seems to me he's trying to make an end
25 run around the reason for having attorneys in the first place,

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1 which is so individuals don't get harassed by adversaries
2 during litigation.

3 But I will accept your offer letter had an offer to
4 purchase with no number. It makes no sense that your client is
5 reaching out, berating these individuals for not accepting a
6 number that was never communicated, but that's where we are.

7 MR. KLEINMAN: Right. And I just want to, also -- as
8 I said initially, and I laid out in my letter, my client has
9 raised serious concerns as a shareholder, and his family has
10 shares in the company. And as I put forth in my letter, there
11 are significant issues that my client feels the way the company
12 is being managed, that affects the valuation of the company,
13 which if my client -- I mean, although Mr. Giller says that
14 it's completely spurious, this lawsuit, your Honor dismissed
15 most of the counts, but you've kept one cause of action. So at
16 least it has one cause of action that was not subject to being
17 dismissed under Rule 12. So I assume, if you had found that
18 cause of action completely specious, you would have dismissed
19 that as well.

20 THE COURT: Well, I'm bound by Rule Six. I have to
21 accept the well-pleaded allegations of the complaint.

22 MR. KLEINMAN: Right.

23 THE COURT: Which I did. But the fact your client may
24 have concerns about how the company is run and, therefore, its
25 resulting obligations either on a per share or an aggregate

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1 basis does not to me equate to announcing there's collusion,
2 criminal conduct, the need for law enforcement to get involved.

3 Also, I imagine, unless you cannot tell me because of
4 privilege, you haven't actually referred this case to any law
5 enforcement agencies. Have you?

6 MR. KLEINMAN: I have not, Judge.

7 THE COURT: Because it says he'd be instructing his
8 attorney to do just that. Maybe that happens tomorrow, but it
9 hasn't happened today.

10 MR. KLEINMAN: I avoid any contact with law
11 enforcement as much as I can, Judge, so I have not contacted
12 any law enforcement agencies, at least to my recollection.

13 THE COURT: I think you'd remember, sir.

14 MR. KLEINMAN: But, you know, I'm just trying to reach
15 some accommodation here so the case can move forward, Judge,
16 and that there is no acrimony. And this is the first time in
17 court I think -- I don't know if Mr. Giller's been in court
18 before, but at least for me in this case.

19 THE COURT: All right. Thank you.

20 Just please give me a moment. Thank you.

21 (Pause in proceeding)

22 THE COURT: Thank you very much for giving me a chance
23 to think about this. I have been addressing these issues for
24 more than a year, but I still remain concerned both about the
25 Second Circuit's case law and the imposition of sanctions and

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1 Mr. Johnson's First Amendment rights. So I'm aware that I have
2 to consider the conduct, the length of time over which it's
3 occurred, and the efficacy of any lesser sanction, and I do
4 understand what defense counsel is saying is that they're
5 asking for a lesser sanction. They could be asking for
6 termination of the case.

7 But I'm also thinking about what Mr. Kleinman has
8 said, about possibly having some greater efficacy if I could
9 speak to Mr. Johnson, and he is here, and I am now speaking to
10 him.

11 So let me say this, Mr. Johnson. I think what you're
12 trying to do is try this case in social media, in addition to
13 this courtroom. I think it is inappropriate. I think it
14 allows me to do a number of things, including impose sanctions
15 and including terminating your case. But, on the off chance
16 that you didn't understand it and need to be advised of it now,
17 I am telling you now what you can and cannot do.

18 You cannot reach out to any of the defendants in this
19 case. Every contact must be done through counsel.

20 You can make no social media postings regarding
21 counsel in this case, because I will understand that any
22 posting, no matter how benign it may seem, is an effort to
23 undermine the order that I'm now imposing and is an effort to
24 intimidate defense counsel, which I will not let you do.

25 I can't exclude the possibility that there is a

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1 legitimate, non-vexatious, non-intimidating reason for you to
2 post about this case. Maybe it exists. But you were warned
3 any postings about this case bring with them a high likelihood
4 that I impose sanctions. The sanctions will begin with fines,
5 but they will very quickly progress to either the exclusion of
6 claims or defenses or the termination of the case.

7 So today I am denying without prejudice the request
8 for fees. If this continues after today, then all bets are
9 off, and I might even consider allowing counsel to renew the
10 motion for fees, because this is getting old.

11 Mr. Johnson, is there anything that I have said that
12 is confusing to you this morning, sir?

13 MR. JOHNSON: No, ma'am.

14 THE COURT: Fine. Then we have an answer on that.

15 Let's please turn to discovery, and this time I'm
16 beginning with Mr. Giller.

17 Mr. Giller, I'm trying to figure out how one goes from
18 I think three and a half million documents to under 2,000
19 pages, but that's a question I'll be having and sharing with
20 the parties.

21 May I understand this, please, sir? Did the parties
22 agree on search terms?

23 MR. GILLER: No, your Honor.

24 THE COURT: Okay. So tell me your recollection of
25 what happened, and then I'll hear from Mr. Kleinman. But I am

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1 focusing on the document production issue in the first
2 instance, sir.

3 You issued requests for the production of documents,
4 sir?

5 MR. GILLER: Correct, which we believe to be targeted
6 to the one claim left on plaintiff's side for breach of
7 contract and to our counterclaim, as the Court may recall, for
8 breach of contract for statements ridiculing defendants, which
9 we know to exist.

10 So we tried to target it to those two issues in the
11 case, or the main issues in the case. I think we served those
12 in accordance with the Court's order back in July, and we
13 received numerous requests for more time and more time. And we
14 were accommodating despite our inclination not to be.

15 THE COURT: Please remind me, when did counsel change
16 for Mr. Kleinman? You can tell me when it started.

17 MR. GILLER: Counsel changed before we served the
18 requests.

19 THE COURT: Thank you.

20 MR. GILLER: And we gave multiple extensions until we
21 finally got written responses. And we weren't getting
22 documents, and eventually -- that was only --

23 THE COURT: Your colleague can speak. She's allowed
24 to speak if she wants.

25 MR. GILLER: No. No. She knows that.

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1 THE COURT: Go ahead.

2 MS. BENNER: Thank you, your Honor.

3 It was around November 13 that we finally received
4 responses, or the 23rd, around then.

5 THE COURT: Were there document requests served by
6 Mr. Johnson on your clients?

7 MR. GILLER: There were, your Honor.

8 THE COURT: Have they been responded to?

9 MR. GILLER: They have, your Honor.

10 THE COURT: Have there been any meets or confers about
11 the adequacy --

12 MR. GILLER: I --

13 THE COURT: Let me finish, sir.

14 MR. GILLER: I'm sorry.

15 THE COURT: Any questions about the adequacy of
16 responses?

17 MR. GILLER: We received a letter the day before
18 Christmas, and we were able to respond yesterday.

19 THE COURT: I see. So that may be something that's
20 coming in the future.

21 MR. GILLER: I suspect it will be, your Honor. Yes.

22 THE COURT: So I imagine the answer to this is yes,
23 but have you had other litigation where the parties sort of got
24 together in advance and agreed on search terms and custodians
25 for the production of documents?

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1 MR. GILLER: Many times. It's not every case for
2 sure. Sometimes people produce the documents they're supposed
3 to produce, and other times they don't. Here, frankly, I --
4 let me say, we didn't have that conversation here. Counsel
5 responded to the request, and then ultimately produced what
6 I've described.

7 I assume you've seen the letter we wrote to Judge
8 Netburn.

9 THE COURT: Yes. Why is it going to Judge Netburn?
10 The case is not referred to her. She's designated magistrate,
11 but I have not referred the case for general pretrial.

12 I told her last night that the issue is perplexed as
13 to why this letter was sent to her, but that I would handle it.
14 So it's all me. None of this case is referred to her at this
15 time.

16 MR. GILLER: I misunderstood.

17 THE COURT: That's all right. Other judges do
18 reflexively refer pretrial supervision to the magistrate.

19 So you can bring your complaints to me, but I did read
20 it, and that's exactly why we're having this conversation. So
21 go ahead.

22 MR. GILLER: Yes. We wrote the letter to explain
23 where we were. So sticking to the documents, we received 1,800
24 pages. Your Honor, I can only describe it as someone went
25 through emails, cut and pasted emails, cut out headers, cut out

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1 pertinent information about senders, recipients, or dates, and
2 pieced them together. It is impossible to wade through. I
3 mean, we've --

4 THE COURT: Do you have them here?

5 MR. GILLER: No, I don't. I'm sorry. I don't have
6 them with us.

7 THE COURT: No. That's okay. You didn't know I'd ask
8 for them.

9 But is it the text, without any indication to whom --

10 MR. GILLER: It's one lengthy, run on document. You
11 can see it's sliced together from different emails. Somebody
12 clearly went through and copied emails into a document and
13 copied another email below it and then just created this
14 document that way. Certainly not documents kept in the
15 ordinary course of business in any fashion, and which is why
16 part of our request is I want the original of these emails now.
17 I don't want to figure out if somebody, Mr. Johnson, did these,
18 and at this point, in light of what we've seen, I think we're
19 entitled to start --

20 THE COURT: I might not disagree with you, although
21 I'll be talking to Mr. Kleinman about that. I was concerned,
22 though, about asking for search terms he's used, because I was
23 concerned it might implicate work products issues. I would
24 have thought there could be a meet and confer on search terms.

25 MR. GILLER: There hasn't been.

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1 THE COURT: Yes.

2 MR. GILLER: Maybe there should have been. I don't
3 know. But this is what we got back.

4 THE COURT: Okay.

5 MR. GILLER: When it's represented as 3 million pages
6 the attorney received from his client and then you get back
7 1,800, it raises questions. Well, what was done? Why did you
8 get 3 million and why did only 1,800 purport to be relevant?

9 And, by the way, none of them actually seem to be
10 relevant. They're not about the issues in the case.

11 THE COURT: If you could pause, I actually understood
12 3.5 million files, which to me is not necessarily pages. It
13 could be more. It could be fewer. But, yes, was that correct,
14 that it was files?

15 MR. GILLER: Yes.

16 THE COURT: Okay. So 3.5 million files got reviewed
17 and yielded 1,687 pages, but you're suggesting perhaps that a
18 page could have multiple emails on it, because it sounds like
19 it's one long run-on email.

20 MR. GILLER: Right.

21 THE COURT: Okay.

22 MR. GILLER: Right. So they're not -- the emails we
23 did receive, they're not the complete emails.

24 THE COURT: Is it only emails? You didn't receive --

25 MR. GILLER: Only emails. We didn't get text

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1 messages. We didn't get social media.

2 THE COURT: Slow down, please, for the court reporter
3 and judge.

4 MR. GILLER: Sorry.

5 THE COURT: Just emails, no attachments, no documents,
6 and --

7 MR. GILLER: No.

8 THE COURT: Weren't there documents in this case? One
9 would have thought -- okay. You've addressed a concern that
10 social media platforms and other things may not have been
11 searched.

12 MR. GILLER: We didn't receive any. We know from what
13 we've seen, they exist and are directly relevant to the claims
14 in the case, criticizing the defendants, so we know they're out
15 there. Even the ones that are part of the case in terms of
16 being attachments to prior pleadings and letters wasn't
17 produced, nothing, nor anything else, nor text messages that we
18 have an understanding have been sent out to investors and other
19 people. So it does not appear any of that was done.

20 We also have no idea at this point, in light of
21 suspension of his account with X, are those documents gone? Is
22 it possible to get them? There may be a spoliation issue now
23 on top of everything else.

24 THE COURT: There was at least an effort at a meet and
25 confer on or about the 23rd of December. Did it happen, or was

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1 there more --

2 MR. GILLER: It happened.

3 THE COURT: More at the scheduling stages?

4 MS. BENNER: Your Honor, I spoke to Mr. Kleinman at
5 the time. He said he was still working with his client, didn't
6 have a response for us. At the time, it had been almost a
7 month since we served our deficiency in reference to the direct
8 request for admission, and I think over two weeks since we
9 served our deficiency letter in response to the document
10 production and interrogatories.

11 So at that point we said we'd be going to the Court,
12 because, as your Honor had already ordered, they had already
13 got the discovery extension, and this case couldn't be delayed
14 any longer.

15 THE COURT: All right. May I ask a different
16 question, please, about the requests for admissions?

17 I think you all know, Mr. Kleinman knows, I come from
18 the criminal side of the house, so request for admissions are
19 not a thing for us. Before that, I was in securities
20 regulation, also not a thing for us. It's interesting to me,
21 if you want to get Mr. Johnson to acknowledge that he made a
22 particular statement, that he sent a particular correspondence,
23 that he sent a particular text, I found a little bit more
24 tricky this idea that he'd have to admit that the
25 correspondence impugned, attacked, or was otherwise critical of

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1 Clearview.

2 So I guess that's the one area in your submission
3 where I -- and perhaps the interrogatories as well, I get it.
4 It's sort of akin to a contention interrogatory, but I'm
5 surprised to see -- I'm surprised that I could force him not
6 only to admit that he made a statement, but that the statement
7 was somehow critical of Clearview. I would have thought that
8 that's what the jury gets to decide, or I get to decide in some
9 later dispositive hearing.

10 So can you help with that?

11 MR. GILLER: He can take whatever position he wants in
12 response, but what he can't do, though, is say he doesn't
13 understand an interrogatory, and the request for admission,
14 which is what he did with a lot of the requests for
15 interrogatories, which is part of the problem. We quoted the
16 language from the agreement he signed and is suing on and just
17 said, that's the language you agreed to. Did you do those
18 things that you said you weren't to do?

19 So I think it's a proper request for admission.
20 Interrogatories is a different question with Southern District
21 local rules.

22 THE COURT: Exactly. Yes.

23 MR. GILLER: We understand that. We understand some
24 of the questions are stepped over, and we're not pursuing those
25 at this stage. I understand at the later litigation, in the

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1 next step, I can ask for those again. But that's, frankly,
2 also why we did requests for admission, because in civil cases,
3 we are allowed to do that, ask him to do something.

4 If he wants to say he didn't do something, I'll put
5 the statement in front of him and he can say it's his
6 statement, and I can make an argument to your Honor that that
7 attack or ridicule is in violation of the agreement. That is
8 where it will go. But I'm entitled to ask the question.

9 THE COURT: I hear you in part. I just wondered, if
10 plaintiff objects, saying -- impugns a text or is otherwise
11 critical, it still defines -- I guess what you're saying is,
12 well, that may be, but that's, in fact, the language from the
13 contract. You didn't make up these terms. These are terms in
14 the contract, correct?

15 MR. GILLER: It was a direct quote out of the
16 contract.

17 THE COURT: Because it does seem at times you're
18 asking him to admit liability on the counterclaim, and that may
19 be where it is, but I appreciate it, so -- I have the concerns
20 I have about the interrogatories. I've expressed to you the
21 concerns I have about the document requests.

22 With respect to what is on your pages four and five
23 regarding specific deficiencies, I'm not disagreeing. I think
24 those materials, if they exist, should be produced, but I'll
25 turn to Mr. Kleinman on that.

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1 What else, before I turn to Mr. Kleinman, should I
2 know?

3 MR. GILLER: If I could cut to the chase, there are
4 two big issues.

5 THE COURT: Sure.

6 MR. GILLER: Could we please -- for the record, my
7 name is Giller. He refers to me as Gillers throughout his
8 correspondence. It's Giller.

9 THE COURT: Okay. I did it once, and I think that's
10 because --

11 MR. GILLER: You corrected yourself.

12 THE COURT: -- there's a professor Steven Gillers --

13 MR. GILLER: Yes.

14 THE COURT: -- who has appeared before me as an
15 expert. So excuse me for confusing you with an expert on
16 ethics, but we are so advised. As a woman who has her name
17 mispronounced regularly, yes, I appreciate it. I'm sure it's
18 accidental.

19 MR. GILLER: Yes. To us, the core issue is simple
20 here. There's a claim for breach of contract. We're asking
21 for information, what information exists to show there was
22 somebody that Mr. Johnson actually brought to my client
23 Clearview that did business with them. We have yet to see
24 that.

25 There's a lot of document requests. There's a lot of

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1 questions. We're kind of covering our bases here, trying to be
2 thorough, but at its core, it's a simple thing. If he had a
3 piece of paper that shows he actually made an introduction that
4 led to a sale, just produce it. We're happy to take a look at
5 it and say, well, you made an introduction; you should get paid
6 on it; and we'll abide by the contract. It's not an issue,
7 although he's now breached the contract, so I don't know if
8 they'd abide by anything at this point.

9 Regardless, you can't see anything -- we're a year and
10 a half into this litigation and I don't have a piece of paper
11 that supports that.

12 THE COURT: Slow down.

13 MR. GILLER: My apologies, your Honor.

14 THE COURT: You're allowed to be passionate but we do
15 need to understand what you're saying.

16 But you're seeking documents on a counterclaim.

17 MR. GILLER: And that's the other part, and we know
18 they exist, because we've all seen them on social media. We
19 know they're postings that have done that.

20 What I don't have to a full extent is what other
21 postings he's done. I know there's a blog that Mr. Johnson
22 puts out into the blog universe. We know he has tweeted people
23 or texted people. I don't have the full extent of the damage
24 he's done. That's what we're trying to get to with those
25 requests. I just want it put in context.

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1 THE COURT: So when you said to me a moment ago, you
2 wanted to cut to the chase, those are the two points you wished
3 to make?

4 MR. GILLER: Yes, your Honor.

5 THE COURT: Are there any other points you want to
6 make before I turn to Mr. Kleinman?

7 MR. GILLER: That's all.

8 THE COURT: Mr. Kleinman, I'll hear from you. Thank
9 you.

10 MR. KLEINMAN: Yes. First of all, I didn't send --
11 after I got the defendant's responses to my demands, I sent a
12 notice of deficiency, and as far as the timing goes on all of
13 these, both parties have been operating within the same time
14 frame, making the demands and responding and so forth. I mean,
15 I made my initial demands way back I think on July 29 if I'm
16 not mistaken, which is not long after I came in the case, and I
17 didn't get the response until I believe November.

18 So it's not as if both -- one party here has been
19 really adamant and out the shoot right away in providing
20 discovery and the other party has been lax in doing it. I
21 think both parties have been lax in responding in a timely
22 basis, and I apologize to the Court for that. Okay.

23 THE COURT: What was the quantum of pages that you
24 received?

25 MR. KLEINMAN: Now, that's the thing, Judge. I didn't

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1 know we were going to discuss this today, and let me just tell
2 you that, you know, I filed it -- after I got their response,
3 their discovery responses, I did file a notice of deficiencies
4 with them.

5 THE COURT: Yes.

6 MR. KLEINMAN: And I did not get until last night
7 about 5:00 a letter from -- I'm not sure who wrote the letter,
8 but an attorney for one of the defendants responding and
9 basically rejecting all of my notices of deficiencies. So I
10 was planning on following up, and I was going to follow up with
11 defendants' counsel. I don't want to mispronounce his name.
12 Nothing intentional.

13 THE COURT: All right.

14 MR. KLEINMAN: Okay. I'm being a good boy. Nothing
15 intentional about mispronouncing his name. But I was going to
16 follow it up, and I thought that maybe he knew the rules better
17 than I did. And also sent it to the magistrate judge, because,
18 as you said, I have a number of cases in district court, and a
19 lot of the times, most of the times magistrates handle
20 discovery.

21 So I was going to send a similar letter to the
22 magistrate basically saying we need the Court's intervention,
23 because I'm getting no response to my demands whatsoever,
24 because they were all, almost all of them rejected. So I am
25 basically at a loss, or the Court is at a loss, because you

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1 don't have any issues before it.

2 THE COURT: I can have another conference, sir.

3 MR. KLEINMAN: I understand that.

4 Okay. As far as, you know, the discovery, as far as
5 the number of documents, my recollection is that I provided the
6 -- when I Bates numbered the documents, I did reference
7 specific pages that responded to specific demands.

8 What I did was accumulate or try to accumulate in one
9 document multiple emails, and if there were parts redacted,
10 they were redacted, because they may have been something sent
11 to myself. Okay. So I would redact. If Mr. Johnson says
12 something to me, I would obviously not include that. Okay.

13 THE COURT: Sir, thank you. Thank you.

14 MR. KLEINMAN: Yes.

15 THE COURT: There's a difference between producing a
16 document in its native format or producing a document as it was
17 sent and redacting things that were irrelevant or privileged,
18 and excising what you believe to be a responsive part of the
19 document, or putting it into a different document.

20 Do you agree with Mr. Giller that these -- that the
21 emails, as produced, were not as they were -- do not look as
22 they did when they were sent?

23 MR. KLEINMAN: My recollection, Judge, again, it's my
24 recollection, I may be wrong, is that they looked like an email
25 that was like -- do you know what a header to the email looks

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1 like? It was the body of the email there.

2 THE COURT: Sure, but if there were six or eight
3 emails that followed that, and those you believe are not
4 responsive, didn't you redact those?

5 MR. KLEINMAN: Right, because if the demand was, let's
6 say, I want to know about -- did your client ever send an email
7 about, you know, what happened at the corner of Pitkin Avenue
8 and Eighth Street, and there's one email about it, and the rest
9 is like other emails having nothing to do with that, well, I
10 would excise those emails. I would only respond -- the emails
11 would only be those responsive to the demand.

12 I tried to be as particular as possible, and I may
13 have engaged in some hyperbole when I said three and a half
14 million, because that's a nice, round number --

15 THE COURT: Well, what was it, sir, then?

16 MR. KLEINMAN: Actually, I do not know.

17 THE COURT: No. You can't -- that's problematic. You
18 cannot tell your adversary you are reviewing three and a half
19 million files and then produce 1,687 pages. I suppose you
20 could, and you can tell me that you went through three and a
21 half million files.

22 What did you review, sir? Without --

23 MR. KLEINMAN: I reviewed from -- Mr. Johnson provided
24 me with access to his emails, and I did searches on those
25 emails for what I felt were relevant terms, which were names of

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1 the defendants and other key words that I did not -- we did not
2 have a discussion, which actually in a lot of cases I do set
3 forth parameters with my adversaries of what words to use. And
4 that might have been a helpful thing to do, but we didn't do
5 that.

6 THE COURT: Why not?

7 MR. KLEINMAN: I don't know. I mean, it was his
8 demands. That's a good question. We didn't do that.

9 THE COURT: The phone does work both ways.

10 MR. KLEINMAN: Neither of us suggested that, and that
11 may relate to their deficiency in providing documents to me is
12 I didn't provide parameters and words that should be provided.
13 That's true.

14 THE COURT: What is the number of files that your
15 client gave to you? Say you may have been hyperbolic. Three
16 and a half million files, although it sounds like you used that
17 number to explain you needed more time to review. How many
18 files did your client give you?

19 MR. KLEINMAN: The total file count, the size of the
20 account was about 400 gigabytes of data, okay, which was a huge
21 amount of data, okay? And I was able to get -- I had access to
22 his email account. I don't know how many files -- I don't know
23 how many emails were in his total email folder. And I used
24 that, and I did search terms, as I said, looking for the names
25 of Mr. Schwartz, and the names of Mr. Ton-That. I'm not sure

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1 how to pronounce his name. But I used those as parameters
2 looking for what would be responsive, and I thought I had
3 provided something that was responsive to him.

4 THE COURT: Again, I'm trying very carefully not to
5 invade the attorney-client privilege, but did the materials you
6 received from your client include more than his email accounts?

7 MR. KLEINMAN: As far as number of emails, yes.

8 THE COURT: No. I mean, did it also include his
9 social media account, sir?

10 MR. KLEINMAN: I did not -- I don't believe I had
11 access to his social media account.

12 THE COURT: Did not the request for production of
13 documents also require the searching of the social media
14 accounts?

15 MR. KLEINMAN: I believe it did.

16 THE COURT: Why then did you not review your client's
17 social media accounts?

18 MR. KLEINMAN: I provided what I thought would be
19 responsive. I thought I did provide actually some -- my
20 recollection is I provided some postings that were done from
21 social media actually.

22 THE COURT: That's why I'm asking the question.

23 MR. KLEINMAN: Yeah. I think I did provide -- I asked
24 my client, and he sent me documents that were from his social
25 media account. I kind of vaguely remember -- I don't have it

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1 in front of me, but I thought there was a posting of a picture
2 of somebody at a certain point. Not on an email. Probably
3 like part of his posting on X or a posting on Substack, but,
4 honestly, I don't have it in front of me, so I can't answer
5 you. I don't want you to hold me to that.

6 THE COURT: Are there not documents, paper documents,
7 or electronic copies of documents that also would be responsive
8 to the requests that they made?

9 MR. KLEINMAN: I don't have any documents that would
10 be -- any papers, documents that would be responsive to their
11 demand.

12 THE COURT: You have no paper documents?

13 MR. KLEINMAN: Correct, other than what I --

14 THE COURT: One moment, sir, because you answered that
15 very carefully and I want to probe that.

16 You don't have any paper, documents that would be
17 responsive to their demands. Does that mean you have paper
18 documents and they weren't responsive?

19 MR. KLEINMAN: Actually, the only paper documents I
20 have is what has been produced in the record so far, okay? I
21 mean -- yeah, I don't think I have any paper documents, hard
22 copy documents. I don't think I have anything.

23 THE COURT: Are there not agreements at issue in this
24 case?

25 MR. KLEINMAN: Yeah. Well, the wind down agreement,

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1 which is part of this, is part of the record already.

2 THE COURT: I understand, but your client I presume, I
3 would think had to produce it at some point.

4 MR. KLEINMAN: Well, it's already in the record. It's
5 already been produced.

6 THE COURT: I understand it's in the record, but who
7 produced it?

8 MR. KLEINMAN: I believe it was attached to the
9 original complaint.

10 THE COURT: All right. Therefore, you believe it
11 doesn't have to be produced again?

12 MR. KLEINMAN: Well, if I'm mistaken, I guess I should
13 have produced an original copy, which is a copy which is part
14 of the record, yes.

15 THE COURT: Mr. Giller is surprised to not see any
16 emails regarding bringing clients to Clearview. Did you in
17 your travels notice any emails of that type?

18 MR. KLEINMAN: Some of the emails I sent referenced
19 contacts between my client and certain individuals or business
20 entities, or I believe there were emails regarding contacts
21 with the Miami-Dade PD. There were emails regarding contacts
22 with the Texas Department of Public Safety. I think those were
23 contracts that may have been -- that may have come to fruition
24 that my client may have an interest in. And I sent specific
25 references and emails regarding my client's specific contact

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1 with those individuals.

2 I do remember, Judge, actually doing a search for
3 Miami, and PD, and Police Department. I mean, I used my own
4 parameters that I felt would be responsive, okay? So those
5 emails that I found I did send, my recollection is I did send
6 to Mr. -- to defense counsel.

7 THE COURT: Sir, to the best of your understanding,
8 were there any other potential clients that were brought to
9 Clearview AI other than the Miami Police Department and the
10 Texas Department of Public Safety?

11 MR. KLEINMAN: There may have been more that I've
12 learned of since the discovery demand. I don't know. I'd have
13 to look through my notes, Judge.

14 THE COURT: But my reason for asking, sir, is if
15 you're in charge of providing the search terms for your search,
16 then you have to know what your client believes to have been
17 all of the clients he brought to Clearview AI, so you knew
18 about those two. If you knew about other ones, I presume you
19 would have done searches that included their names as well.

20 MR. KLEINMAN: Yes. That's true.

21 THE COURT: You have --

22 MR. KLEINMAN: I didn't have any other names to do a
23 search for.

24 THE COURT: The concern, Mr. Kleinman, that I have is
25 if you stand on this document production and say, this is all

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1 we had, then it may be that ultimately your client has shot
2 himself in the foot, because there will be a summary judgment
3 motion that will say, see, nobody was brought to Clearview, and
4 you won't have anything to say in opposition to that.

5 MR. KLEINMAN: Well, subject to, you know, if there
6 were any -- if the individuals who my client had contact with
7 at Miami-Dade PD or Texas Department of Public Safety were
8 deposed or provided information saying they did eventually
9 contract with Clearview, and they did, you know, and they
10 didn't have any further -- they didn't deal directly anymore
11 with my client. They only dealt with the defendants. But my
12 client was the one who introduced them.

13 I mean, that is quite possible. My client introduced
14 them. They stopped dealing with my client completely. They
15 being, let's say Miami-Dade PD, and only dealt with
16 Mr. Schwartz, or Mr. Ton-That, or whoever it was at Clearview.
17 And that's a contract that, as I understand it, my client might
18 be entitled to some commission for.

19 THE COURT: Let me talk to you, please, about
20 interrogatories, sir.

21 MR. KLEINMAN: Sure. Again, I don't have the
22 documents in front of me, so --

23 THE COURT: I understand. To me, there are
24 deficiencies that are listed in pages four and five, purported
25 deficiencies in the responses to interrogatories. From my

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1 perspective, I agree with the defense that each of those should
2 have been responded to. So, I suppose you could push back at a
3 later date, but from my perspective, interrogatory number six,
4 the prior litigations should have been identified.

5 Interrogatory number seven, the telephone numbers, phone
6 numbers, accounts, they should have all been identified.

7 So I'm just telling you, to the extent that you have
8 not responded to these interrogatories, which are six, seven,
9 12, 14, 16, 17, 18, 19, 20, and 21, I think they should be
10 responded to with this proviso. With respect to
11 interrogatories 17, 18, and 19, I think the inquiry regards
12 statements by your client that attacked Clearview, Ton-That,
13 and Schwartz. Then 20 and 21 documents were wherein your
14 client attacked the reputation of the defendants.

15 I can understand if you are wondering what does it
16 mean "to attack," what does it mean "to attack the reputation
17 of" then fine, then just identify the statements where he's
18 talking about them, and we'll figure out whether those things
19 are -- I just think -- I don't think the answer is not to
20 produce. I think the answer you produce the statements in
21 which he's making mention of them and saying that you don't
22 believe it's critical. But I'll listen to you if you disagree.

23 For the other ones, for interrogatories six, seven,
24 12, 14, and 16, I think they just have to be responded to.

25 MR. KLEINMAN: Okay. Can I assume you'll issue an

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1 order specifically directing those specific interrogatories?

2 THE COURT: I was doing this so I didn't have to, and
3 I am asking you to get the transcript of this, but I'll see
4 what I can do.

5 MR. KLEINMAN: Okay. I just want to be clear what I
6 need to produce. That's all.

7 THE COURT: All right.

8 MR. KLEINMAN: I don't mean to give you more work.

9 THE COURT: No. No. You're not the only one.

10 MR. KLEINMAN: That's fair enough. That's fair
11 enough.

12 THE COURT: I feel the same with respect to the
13 production of documents, 21, 22, 23, 24, and 28. As I've said,
14 I have a little bit of issue with the request for admissions,
15 but I've already had my discussion with counsel on that. So my
16 view is those have to be responded to.

17 MR. KLEINMAN: Okay.

18 THE COURT: But the bigger issue is Mr. Giller has
19 said to me that he can't figure out where these emails come
20 from, because they're not produced as they were maintained in
21 the ordinary course of business, and they're not paired with
22 the document requests or interrogatories to which they are
23 responsive. You've said no.

24 MR. KLEINMAN: My recollection, Judge, is I've Bates
25 numbered, and if there was the same interrogatory 12, I put

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1 down what Bates number pages responded to that. That's my
2 recollection of what I did.

3 THE COURT: Okay.

4 MR. KLEINMAN: And I think that, again, I mean, I'm --
5 I have not had a chance to submit to your Honor, because you're
6 obviously handling the discovery issues, my own issues
7 regarding the fact that my demands were basically dismissed as
8 being, you know, the usual language, overbroad and burdensome
9 and what everybody says --

10 THE COURT: I will take those as seriously as I'm
11 taking these.

12 MR. KLEINMAN: I have no doubt, Judge.

13 THE COURT: You have to let me know what they are.

14 One moment, please, sir.

15 At page three of Mr. Giller's letter, he expresses
16 concern because he just doesn't know whether your client's
17 social media platforms were searched and whether your client's
18 cell phone information, the stuff in his cell phone was
19 searched.

20 If you know, tell me. If you don't know, I'll let you
21 go back and confirm that they were.

22 I would expect that it's not enough to look in your
23 client's email accounts, that you'd have to look in the cell
24 phone as well, and you'd have to look in the social media
25 platforms.

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1 MR. KLEINMAN: I just want to make one observation,
2 your Honor.

3 THE COURT: Yes.

4 MR. KLEINMAN: That my client told me, since he no
5 longer has access to X, that means he can't go back and get
6 everything he published on X. That banning on X wasn't
7 something he sent an email and said please ban me from X.

8 THE COURT: No. Of course.

9 MR. KLEINMAN: So they can --

10 THE COURT: They'll make the spoliation argument, and
11 you'll say you had no idea it was coming until it came.

12 MR. KLEINMAN: If they want to issue a subpoena to X
13 and get the documents that way, I guess that is a way to get
14 around it, but my client, since he has no other access to it,
15 he won't be able to produce information that was published on
16 X.

17 THE COURT: Right now, today, if he tried to access
18 his account on X, he is just locked out?

19 MR. JOHNSON: Yes, ma'am.

20 MR. KLEINMAN: Yes. That's what he told me.

21 MR. JOHNSON: Yes, ma'am.

22 THE COURT: That's what he told me, and hopefully he
23 won't lie to a Federal Judge.

24 MR. KLEINMAN: I'm not sure what the solution is, but
25 as I said, if they want to issue a subpoena to X, I think that

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1 might be --

2 MR. JOHNSON: I can show your Honor if you wish.

3 THE COURT: Not at this time, sir. Thank you.

4 Are there other social media platforms on which your
5 client has had an extant account or an account that was in play
6 during the time period?

7 I heard something about Substack.

8 MR. KLEINMAN: Something on Substack, and there might
9 be some other. I don't recall.

10 THE COURT: Can I understand from you, sir, that you
11 will speak with your client to ensure that you have reviewed
12 those social media accounts to which he has access or can get
13 access?

14 I want to be sure -- you didn't read his Substack
15 account, did you, sir?

16 MR. KLEINMAN: No, I did not read his Substack
17 account.

18 THE COURT: But you're going to check.

19 MR. KLEINMAN: I will check Substack postings --

20 THE COURT: Would you check with him now when we're
21 all together whether he has any other social media accounts
22 that were in play during the time period of the events charged
23 in the complaint?

24 MR. JOHNSON: Your Honor, the emails in the Substack
25 all go to the same place, and I turned them all over to

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1 counsel, so there shouldn't be anything that's outstanding.

2 THE COURT: Everything in Substack was turned over to
3 your counsel?

4 MR. JOHNSON: The emails, the X's, all of that was
5 reproduced within the emails, and I gave them all to counsel,
6 so presumably they should have been included along with the
7 emails.

8 THE COURT: Is it your belief, sir, then at least as
9 of the time you sent this information to your counsel, all of
10 your X postings were sent to your counsel?

11 MR. JOHNSON: Yes, ma'am.

12 THE COURT: And any postings made after the date you
13 sent those to your counsel would not be there?

14 MR. JOHNSON: Presumably not, ma'am.

15 THE COURT: Right, because you're not psychic.
16 Everything, the entirety of your Substack account, was sent to
17 your counsel, or was it that portion of the Substack that
18 related to Clearview?

19 MR. JOHNSON: All of it.

20 So just to be clear, I was my first subscriber to my
21 own Substack, so I get my emails.

22 THE COURT: Yes.

23 MR. JOHNSON: Also, my other emails for my other
24 accounts, I was also a subscriber, so presumably it would be
25 triplicate.

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1 THE COURT: Which is better than not having it at all.

2 And in terms of cell phone information, sir --

3 MR. JOHNSON: As far as I know, presumably --

4 THE COURT: Mr. Kleinman, I don't want to intrude on
5 your relationship. I'll let you have that question.

6 MR. JOHNSON: I have no objection to speaking to you
7 directly, your Honor.

8 MR. KLEINMAN: No, this is not a problem.

9 THE COURT: All right. Go ahead, sir.

10 MR. JOHNSON: I have no objection whatsoever.

11 THE COURT: Just bring the microphone closer to you so
12 I can hear you.

13 MR. JOHNSON: Yes. So I was instructed by defense to
14 do most communications through Signal, a self-deleting app --

15 THE COURT: Okay.

16 MR. JOHNSON: -- which I objected to at the time,
17 because we want to preserve records, because we're dealing with
18 federal agencies.

19 And since the time which my X account was suspended --
20 and you will recall, just to be precise on this, your Honor,
21 that there are a number of people who are uniformed officers at
22 the IDF who work for X. Their offices are located in Ireland.

23 Since this time, since I gave the communications with
24 counsel, which I have no interest in ever communicating with
25 counsel again, I have been contacted by federal law

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1 enforcement. I have met with law federal law enforcement.

2 THE COURT: You have or have not?

3 MR. JOHNSON: I have. I have.

4 THE COURT: You have reached out --

5 MR. JOHNSON: No. They have reached out to me.

6 THE COURT: Okay.

7 MR. JOHNSON: Yes, ma'am. The Department of Homeland
8 Security.

9 THE COURT: Okay.

10 MR. JOHNSON: If I may, your Honor?

11 THE COURT: No. I'm trying to disentangle everything
12 you told me in that paragraph.

13 MR. JOHNSON: Yes, ma'am.

14 THE COURT: So you're saying to me, first, I should
15 expect fewer communications than I would otherwise expect
16 because a lot of communications were through Signal, and there
17 are no memorialization of those communications?

18 MR. JOHNSON: Yes, ma'am.

19 THE COURT: Separately you're telling me you were
20 approached by DHS?

21 MR. JOHNSON: Yes, ma'am.

22 THE COURT: About this case?

23 MR. JOHNSON: About this case, and specifically about
24 the defense.

25 THE COURT: Okay.

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1 MR. JOHNSON: Counsel, as well as defendants. Yeah.
2 And I'm happy to --

3 THE COURT: You did not initiate these contacts, sir?

4 MR. JOHNSON: No, ma'am.

5 THE COURT: They reached out to you?

6 MR. JOHNSON: Correct.

7 THE COURT: You've spoken with them?

8 MR. JOHNSON: I have, and I've met with them on
9 several occasions.

10 THE COURT: Okay.

11 MR. JOHNSON: And if I may, your Honor, if it would
12 please the Court, if it -- you know, I have no interest in
13 pursuing this matter further. I'm embarrassed by the whole
14 situation.

15 THE COURT: Which "this" is that, sir?

16 MR. JOHNSON: "This" would be this case and my
17 particular claims, and I talked with counsel about this
18 earlier. So I met with federal law enforcement, and I met with
19 them basically over the last few weeks now.

20 And I did not -- I'm, frankly, far from being an
21 investor, I feel as if I was a victim of an elaborate harm, and
22 I am embarrassed for my participation in it. And I only
23 pursued the matter --

24 THE COURT: Take a moment, please, sir.

25 MR. JOHNSON: -- because my ex-wife and daughter are

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1 shareholders, and I wanted to do right by them.

2 THE COURT: Okay. Did they ask you to pursue it, sir,
3 or did you want to do it on their behalf?

4 MR. JOHNSON: Both.

5 THE COURT: Okay. Therefore, what?

6 MR. JOHNSON: Therefore, I spoke to the press. So my
7 wind down agreement was amended after I signed it. So many of
8 the claims that are being made here were modified after I even
9 signed the contract, which I didn't even know you can do, but
10 apparently you can.

11 So I spoke to Kashmir Hill, because I was concerned,
12 having spoken to other friends of mine in federal law
13 enforcement, that the company was a front.

14 THE COURT: Who did you --

15 MR. JOHNSON: I spoke with Carl Wagner, who was
16 counter-intelligence for CNN. I also spoke with Johnathan
17 Buma, who was my handler for many years with the FBI.

18 THE COURT: Who was that, the second gentleman?

19 MR. JOHNSON: Johnathan Buma.

20 THE COURT: B-u-m-a?

21 MR. JOHNSON: Yes, ma'am. Johnathan, with a
22 J-o-h-n-a-t-h-a-n.

23 THE COURT: Thank you.

24 MR. JOHNSON: He's since no longer with the FBI.

25 And I also spoke with members of what I understand to

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1 be helpful foreign intelligence, namely the French and the
2 British.

3 THE COURT: Okay.

4 MR. JOHNSON: And to be precise about it, a better --
5 counsel know -- to his Jewishness, my counsel is Jewish. My
6 girlfriend is Jewish. It's whatever.

7 For me, what I was informed of was there's a concern
8 that Clearview and the source code for Clearview has material
9 that's both Chinese and Israeli in origin.

10 And what happened, if I may, your Honor, is that many
11 of the attacks on my reputation began when Hal Lambert, who is
12 one of the board members of Clearview, approached me about
13 selling Clearview to an organization calling itself Friends of
14 the IDF, which I presumed to mean the IDF. I think that's a
15 fair assumption, your Honor.

16 THE COURT: All right.

17 MR. JOHNSON: And so this defamation began, I was
18 swatted, had all sort of attacks against me. I was helpful to
19 law enforcement in dealing with white nationalists, where I was
20 a confidential informant. My code name was Genius. I didn't
21 pick it. Sorry.

22 And then, basically, the pretext of me being an
23 anti-Semite was used to steal my shares.

24 My mother lived in Israel. My grandfather worked for
25 the CIA in Israel. I have no beef with the Israeli people.

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1 It's a lovely country. I am against the killing of
2 Palestinians, as I hope we all are.

3 And then, just to be clear about this, I wanted to
4 warn the public and the press. I'm obliged by my faith to
5 offer people an opportunity to settle, to do the right thing.
6 But having spoken to federal law enforcement, I don't believe
7 there's anything to really recover here, and I don't want to
8 waste the Court's time, certainly not a civil court. And I've
9 made myself available to law enforcement in this country and in
10 other countries.

11 This is not -- you know, on social media, while I felt
12 I had to defend myself against my own defamation, I pulled down
13 all my social media accounts. I agreed with my CO, or my --
14 whatever at the Department of Homeland Security, not to talk
15 about this case anymore. And it's not because I don't think
16 the case has merit. I wouldn't have spent millions of dollars,
17 both with Alston & Bird and Mr. Kleinman, who, by the way, has
18 done a much better job representing me than Alston & Bird,
19 which I understand is very close with the British Government,
20 which I learned when I was last in Britain this November.

21 So, you know, I apologize for anything I did to harm
22 the Court. It was not my intention. And I'm embarrassed by
23 the whole situation, to be honest with you.

24 THE COURT: So what do you want me to do?

25 MR. JOHNSON: I would like you to speak with the

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1 several DHS officers, whose names I will give you. I prefer to
2 do it privately.

3 THE COURT: Oh, no. I don't know how --

4 MR. JOHNSON: You may not be able to do that, but --

5 THE COURT: Right.

6 MR. JOHNSON: If you like, I would want you to dismiss
7 my part of the case, or my -- or I would like you to dismiss
8 the case entirely, even though I'm bringing suit.

9 THE COURT: I need to pause for a moment.

10 Mr. Kleinman, do you know the expression "bury the
11 lead?" I did not know this was coming. I would have asked this
12 at the beginning. I don't --

13 MR. KLEINMAN: I'm not --

14 THE COURT: I'm surprised by all of this. Let's do
15 this, Mr. Kleinman. Take a few minutes.

16 MR. JOHNSON: No, we've spoken earlier.

17 THE COURT: You've known this the whole time, Mr.
18 Kleinman?

19 MR. KLEINMAN: Well, I've had some discussions with my
20 client about this, but I've not had -- I had a brief discussion
21 with him about the efficacy of filing a Rule 41(a)(2) motion.
22 Okay. However, I explained to him that there are outstanding
23 counterclaims obviously.

24 THE COURT: Yes.

25 MR. KLEINMAN: I don't want to get into the area of --

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1 I mean, this is not an area, with all due respect, that --

2 THE COURT: That's a statement that you should -- let
3 me say this, don't ever say "with all due respect." It's a
4 trigger for me. It suggests you have no respect.

5 MR. KLEINMAN: I'm glad you told me.

6 THE COURT: That's why I told you.

7 My question is, do you want this case to proceed or
8 not?

9 MR. KLEINMAN: My client has expressed a desire to
10 withdraw his claim. And I will do that under Rule 41(a)(2)
11 obviously, because --

12 THE COURT: But you're concerned about the
13 counterclaims.

14 MR. KLEINMAN: My concern is there are counterclaims,
15 and if he withdraws his claim but is still involved in the
16 litigation and the cost and the expense of doing that --

17 THE COURT: I understand.

18 MR. KLEINMAN: I have not dealt with defense counsel
19 and given them any indication about this, because I had a brief
20 discussion with my client outside the courtroom now.

21 THE COURT: All right.

22 MR. KLEINMAN: So I'm kind of like not all the way
23 there. Okay.

24 THE COURT: Okay.

25 MR. KLEINMAN: Before I get all the way there, I want

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1 to make sure I have all the facts.

2 THE COURT: Of course, Mr. Kleinman.

3 MR. KLEINMAN: And let me say one other thing before I
4 get all the way there. I want to make sure my client
5 understands the ramifications of whatever was done. And I am
6 someone who has learned long ago to make sure I get those
7 acknowledgements in writing.

8 MR. JOHNSON: I'm happy to make them in court right
9 now if that would please your Honor.

10 THE COURT: I'm sorry, Mr. --

11 MR. JOHNSON: I'm happy to make it right now if it
12 would please your Honor. I understand the counterclaims
13 against me. I understand. When we began this process, I told
14 Mr. Kleinman, we're only going to do the right thing as far as
15 the country goes, and if I'm instructed by federal law
16 enforcement to pursue certain actions, I'm going to do that.
17 And so, though it does not feel good to be in this situation,
18 your Honor --

19 THE COURT: Do you want to finish your thought?

20 MR. JOHNSON: I would.

21 THE COURT: Go ahead.

22 MR. JOHNSON: I have met with federal law enforcement
23 and seen contracts and talked with the highest level of
24 authority at Homeland Security about this technology. I'm not
25 saying it -- I have other investments, other things I have

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1 backed. And I am embarrassed by the situation.

2 THE COURT: Sir, why are you embarrassed, if I may
3 ask?

4 MR. JOHNSON: Because I have been made a fool.

5 THE COURT: I'm not saying that. By whom?

6 MR. JOHNSON: My ex-wife is --

7 THE COURT: Okay. They're family.

8 MR. JOHNSON: My wife and my daughter are
9 shareholders. I deliberately set up the trust for them, so I
10 could speak publicly, knowing full well I could lose my shares,
11 because I thought it was the right thing to do.

12 THE COURT: Okay. Now, sir, a little while ago you
13 asked me about talking to Homeland Security.

14 MR. JOHNSON: Yes, ma'am.

15 THE COURT: The issue for me -- it's not that I have a
16 philosophical position. It's not that I haven't spoken to DHS
17 folks, because I was a prosecutor before this.

18 MR. JOHNSON: Yes.

19 THE COURT: However, I don't know what I know. I'm
20 the judge presiding over the case. I have no firsthand
21 knowledge about anything. So appreciate the thought, but I
22 don't think there's anything I can contribute. So can we put a
23 pin in it a moment?

24 MR. JOHNSON: Yes, ma'am.

25 THE COURT: Mr. Giller, I'm just wondering if I could

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1 talk to you, sir. This is all new to me, and it raises a
2 really interesting question.

3 Perhaps I'll go off the record.

4 (Discussion off the record)

5 THE COURT: We're going back on the record.

6 MR. KLEINMAN: I just want to make an observation. I
7 know this is new to defense counsel --

8 THE COURT: And to Court.

9 MR. KLEINMAN: -- and to your Honor. And, as I said,
10 I wanted to have this discussion. I just had this -- this was
11 given, communicated to me very, very recently. And I had a
12 very brief opportunity before court to discuss this with my
13 client. I did not have the opportunity to discuss this with
14 defense counsel.

15 And one of the reasons I want to say that I did not
16 file a request with the magistrate or your Honor to deal with
17 my problems with discovery was I wanted to make -- I wanted to
18 make sure that I wasn't wasting my time, billable time on an
19 issue when the case might be resolved.

20 THE COURT: Of course.

21 MR. KLEINMAN: Do you understand what I'm saying? I
22 don't want to spend a lot of time killing a lot of trees when I
23 could only kill a few bushes and then the case is done with.
24 Got it?

25 THE COURT: I appreciate the metaphor, sir. I still

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1 think you should have told me before an hour and a half into
2 this subject.

3 Do I understand, sir, on this record, that it's your
4 client's wish to dismiss the case with prejudice?

5 MR. KLEINMAN: He's expressed an interest -- correct,
6 with prejudice. Also, I have not discussed it, but I think
7 certainly, as far as any type of settlement, a
8 non-disparagement agreement and so forth, so we remove the
9 issues that --

10 THE COURT: We would like a non-disparagement
11 agreement that --

12 MR. KLEINMAN: We can include defense counsel. They
13 can be part of it. That's fine.

14 THE COURT: Does your client wish this case to be
15 dismissed even if the counterclaims remain, or is it contingent
16 on the contemporaneous dismissal of the counterclaims?

17 MR. KLEINMAN: That is not -- where I got as far as
18 the discussion --

19 THE COURT: Okay.

20 MR. KLEINMAN: -- and that's why I wanted to first
21 talk to Mr. Giller beforehand, and once I had all the
22 information, then explained to my client, well, if you kill
23 your claim, you've still got these defamation claims -- whether
24 they'll be successful or not, I don't know, but, you know,
25 that's for a jury to decide, whether there was defamation and

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1 so forth. And I don't know what the truth is, because I never
2 know what the truth is, so -- but I wasn't at that point is a
3 short answer.

4 THE COURT: I do understand that.

5 Mr. Giller, does it make sense for you to talk to Mr.
6 Kleinman, for you to talk to your client?

7 I've got on the record what I've got on the record,
8 and I wonder if perhaps this transcript may one day be
9 requested to be sealed.

10 What do you want, sir?

11 I wish to do this. I've given my answer on the first
12 part of our reason for our meeting, which was the sanctions. I
13 was in the middle of discussing discovery. I have in my head
14 drafted in part an order regarding discovery.

15 I know there's a possibility that there may be a
16 deficiency letter coming from defense and I'll have to do this
17 from the other side. I'd like for myself to stop working on
18 discovery issues if there's a chance this case is going to be
19 dismissed. So can I have that? Can we stop this conference?

20 MR. GILLER: Your Honor, of course, at the Court's
21 request, we're willing to stop. I have some concerns, I'll
22 just put on the record, that there were false statements made,
23 there were incorrect statements made about discovery, about
24 even another claim that's been filed. There's no defamation
25 claim that either side has filed in --

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1 THE COURT: I think there's an imprecision in the
2 claims, but I don't know --

3 MR. GILLER: My point is there is a number of things
4 said in respect to the issues we're discussing that are not
5 accurate.

6 THE COURT: Okay.

7 MR. GILLER: I have a fear we'll walk out of here with
8 no agreement and I'm going to have to revisit all these issues
9 again and spend several more hours with the Court on this.

10 THE COURT: Well, we're here now. I apparently have
11 nowhere to go. Do you want to talk to your client now?

12 Do you want me to give you my jury room so that
13 counsel can speak about this?

14 Because the issue, from my perspective, is I'm trying
15 to strike while the proverbial iron is hot. I've been told,
16 there's an offer on the table to dismiss this case. But I
17 understand your concerns, and Mr. Kleinman has some concerns as
18 well, because this hasn't really come to me in its fully formed
19 form.

20 I'm willing to stay here. I can stay at the bench,
21 although that seems to be a bit of a waste. I can stay in the
22 robing room. You can talk to your client. You can talk to Mr.
23 Kleinman.

24 If there's something you want to put on the record,
25 equivalent to a terms sheet, as to the conditions under which

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1 this case gets dismissed, I will listen to you. So to your
2 point about not wanting to lose -- to have this change and
3 morph into something else as soon as we leave, fine, then do
4 you have your phone here?

5 MR. GILLER: I checked it in downstairs, your Honor.

6 THE COURT: Okay. My law clerk can help you get it,
7 or we can give you access to a phone.

8 MR. GILLER: I'm happy to reach out to my client. I
9 don't know if I can reach him now. I'm happy to try. I can't
10 make any representations about what they're willing to do
11 without talking to them.

12 MR. JOHNSON: Your Honor, may I --

13 THE COURT: No. No.

14 Sir, I'm asking you what you want to do right now.
15 You had said to me you're concerned that this will, again, my
16 words, not yours, transmute or modify into something else, and
17 I understand that. So I'm trying to see what we can do to
18 mitigate against that happening. That's what we're able to do
19 now. But if you think it's better to part, sleep on it, talk
20 to Mr. Kleinman, that's fine, too. Just tell me what you want,
21 sir.

22 MR. GILLER: I need to speak to my client. My contact
23 at my client, I don't know that -- he has to speak to the
24 owners of the company. I don't know if he can reach them
25 immediately.

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1 I can get my client on the phone. I suspect he might
2 have more difficulty reaching his -- if they're in different
3 parts of the country or whatnot.

4 MR. JOHNSON: Your Honor, he should have controlling
5 shares of the company, so he could make the decision
6 unilaterally if he wanted to.

7 THE COURT: This is who, sir?

8 MR. JOHNSON: This is Ton-That.

9 THE COURT: Ton-That.

10 Well, Mr. Giller, do you want to speak with
11 Mr. Kleinman? I can give you a room to speak.

12 MR. GILLER: It's not that I have an objection to
13 talking to counsel, but I can't do anything about the offer
14 that's on the table, which is to dismiss everything if we
15 dismiss, without speaking to my client, without --

16 THE COURT: That's fine. Do you want to end today?
17 Do you want to come back this afternoon? I can do whatever
18 makes the most sense for the parties.

19 MR. GILLER: Your Honor, I'm okay ending today in
20 light of the proposal. It's on the record.

21 I'm going to have to trust a little bit that it wasn't
22 just made as some kind of subterfuge here. I'll speak to my
23 client, and I'm sure he'll respond back if not today by
24 tomorrow.

25 And I'd just like the Court, if we could reconvene it,

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1 if we could calendar it for reconvening fairly soon, in the
2 event it does not get dismissed immediately?

3 THE COURT: All right. Let me understand what this
4 means, sir.

5 Let's go off the record again.

6 (Discussion off the record)

7 (Continued on next page)

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1 THE COURT: During the time that we've been off the
2 record, we've been discussing a path forward for this case
3 depending on which fork in the road is taken. We've also
4 talked about the possibility of having a date to resume the
5 discovery disputes that we've been having, and I've offered to
6 the parties Monday at 3:00 p.m. as a possible time to get
7 together and review discovery issues.

8 Right before we got back on the record, I was advised
9 by plaintiff that he has advised the Department of Homeland
10 Security that he will make no further public statements about
11 this case.

12 Mr. Johnson, have I said that correctly?

13 MR. JOHNSON: Yes, ma'am.

14 THE COURT: Thank you. And, Mr. Kleinman?

15 MR. KLEINMAN: I want to be clear on the record that I
16 was not withholding any information regarding possible
17 settlement, nor to sandbag my adversary. This was just
18 something that was just dating, and I wanted to make sure my
19 client was fully aware of all the ramifications of any
20 decisions he made. I had no intention -- it's not the way I
21 practice law, and I wanted to make sure I had all the facts in
22 writing before I made any type of representation to either the
23 Court or my adversary.

24 THE COURT: And it may be the case, sir, that your
25 client, having jumped the gun, may not have been the advice you

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1 would have given him. And I understand that.

2 MR. KLEINMAN: Correct.

3 THE COURT: I will not take it as sandbagging.

4 Mr. Giller will not take it as sandbagging.

5 Mr. Giller, is there something else you want to add to
6 the record?

7 MR. GILLER: No, your Honor, that's fine.

8 MR. JOHNSON: To be precise, your Honor.

9 THE COURT: Mr. Johnson, yes.

10 MR. JOHNSON: We came at 3:00 in the morning today.

11 THE COURT: Yes, sir.

12 MR. JOHNSON: Precisely because I just met with
13 Homeland Security later, and it's a new development. I gave
14 them my word to them that I intend to not speak publicly about
15 the case, to ask for dismissal of this case in my particular
16 thing. So if there's any punishments or whatever, if they
17 intend to continue pursuing it, I have thought about the
18 matter, I've spoke within the requisite people, I talked to a
19 priest about it, for what it's worth, and I'm entirely
20 confident if you were to dismiss my claims, even if they were
21 to pursue them, I would continue to have that position because
22 of what I said to the Department of Homeland Security.

23 THE COURT: Okay. That's on the record.

24 Thank you all very much. I'll hear from you as
25 quickly as I can. Thank you again. (Adjourned)